IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 19881 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE AKIL KURESHI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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AR MODY - Petitioner(s)
Versus
STATE OF GUJARAT - Respondent(s)

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Appearance :
MR IS SUPEHIA for Petitioner(s) : 1,
MR SIRAJ GORI, AGP for Respondent(s) : 1,

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CORAM : HONOURABLE MR.JUSTICE AKIL KURESHI

Date : 23/06/2006

ORAL JUDGMENT

1. The petitioner a retired Government servant has challenged an order of penalty dated 26-8-2005 by which the Government was pleased to impose a

cut in the pension to the tune of Rs. 1000/- per month for a period of five years. The petitioner has prayed that such order is bad in law and same requires to be quashed and the recovery already made should be refunded.

2. Though number of questions have been raised by the petitioner in the petition challenging the impugned order, learned advocate Shri Supehiya for the petitioner submitted that the petitioner would at this stage press the main ground of violation of principles of natural justice and if the ground is accepted, since as a natural corollary thereof, the proceedings would have to be remanded to the authorities to state where the defect is detected, the petitioner would not be arguing and urging other question at this stage and would keep such contention open for pressing in service in future, if found necessary.

3. In this regard, it is submitted that as an retired employee, Government was required to

seek advise of Gujarat Public Service Commission before deciding upon the penalty to be imposed on the petitioner. It is submitted that in fact such advise was sought to be taken into consideration and also relied upon by the Government while passing the impugned order. It is contended that a copy of advise of GPSC has not been supplied to the petitioner at all. It is contended that on account of this breach of principles of natural justice, the entire inquiry would vitiate and order of penalty therefore, deserves to be quashed. Reliance has been placed on the decision of B.J.Jadav v/s. State of Gujarat reported in 2005(2) GLH 334 wherein this Court had taken a view that advise of the GPSC forms important material and if collected behind the back of the delinquent and relied upon by the Government, the same would violate the requirement of principles of natural justice. It is submitted that the said decision has achieved finality and in fact the directions contained therein have been implemented.

4. It is not in dispute that advise of GPSC was collected. As observed in the decision of B.J.Jadav v/s. State of Gujarat(Supra) in case the State Government decide not to accept advise of GPSC, the Constitutional provisions require that same may be tabled before the State Legislature with reasons for such nonacceptance. This would demonstrate that the advise of GPSC would carry considerable persuasive force. Such important material when collected behind the back of the delinquent and also relied upon would offend the principles of natural justice.

5. In view of the above discussion, I find that the impugned order requires to be quashed. As noted earlier, however the inquiry proceedings cannot be brought to an end. The proceedings shall have to be remanded to the Government for fresh consideration and disposal in accordance with law from the stage where the defect has been detected. Ultimately by quashing the impugned order dated 26-8-2005, it is directed that respondent shall supply copy of advise of the

GPSC to the petitioner and permit him to make his representation in response to the same. After taking into consideration the representation that the petitioner may make the Competent Authority shall pass fresh orders in accordance with law. Since the impugned order stands quashed though till the respondents pass fresh orders full original pension of the petitioner shall stand restored, the petitioner shall not insist on recovery of penalty collected from his pension so far. The representation of the petitioner shall be decided within a period of three months from the date of receipt of a copy of this order.

6. With these directions, the petition is disposed of. Rule made absolute accordingly with no order as to costs.

(Akil Kureshi,J.)

(raghu)